council, and the councilman, having been duly elected and qualified, recognized as a member of and participating in all council proceedings, was an officer *de facto* and his acts were valid. *Oliver* v. *Jersey City,* 63 N. J. L. 634, 48 L. R. A. 412. A city ordinance cannot be assailed on the ground that the council which passed it was not legally constituted. *Susanville* v. *Long,* 144 Cal. 362; *Pence* v. *City of Frankfort,* 101 Ky. 534; *Woodruff* v. *N. Y. & N. E. R. Co.,* 59 Conn. 63; *Perkins* v. *Fielding,* 119 Mo. 149; *Magneau* v. *Freemont,* 30 Neb. 843, 27 Am. St. Rep. 436. The acts of a *de facto* officer are valid as to the public and third persons who may be interested, though invalid as to himself. *Wilcox* v. *Smith,* 5 Wend. 234; *Fowler* v. *Bebee,* 9 Mass. 231; *Green* v. *Burke,* 23 Wend. 490. The early cases held that in order to constitute a person an officer *de facto* he must occupy the office under some color or claim of title. *McCall* v. *Byram,* 6 Conn. 428; *McInstry* v. *Tanner,* 9 Johns. 135; *Douglas* v. *Wickmire,* 19 Conn. 492; *Cocke* v. *Halsey,* 16 Pet. 71. But these decisions have been qualified by holdings that the reasons of public policy upon which the acts of an officer *de facto* are held valid may apply even to the case of an intruder and usurper. *Wilcox* v. *Smith,* 5 Wend. 231; *People* v. *Kane,* 23 Wend. 414; *Petersilea* v. *Stone,* 119 Mass. 465; *Wilson* v. *King,* 3 Litt. 457; *State* v. *Carroll,* 38 Conn. 449, 9 Am. Rep. 409. The leading case of *State* v. *Carroll, supra,* states that "one who exercises the duties of an office under color of an election or appointment by or pursuant to a public, unconstitutional law before the same is adjudged such is an officer *de facto.*" This, says Justice FIELD, "refers not to the constitutionality of the act creating the office, but to the unconstitutionality of the act by which the officer is appointed to an office legally existing." *Norton* v. *Shelby County,* 118 U. S. 425; *Cole* v. *Black River Falls,* 57 Wis. 110. *Contra*: that there may be a *de facto* officer though no *de jure* office exists, criticising Judge FIELD'S qualification of the rule. *Burt* v. *Winona Ry. Co.,* 31 Minn. 472; *State* v. *Gardner,* 54 Ohio St. 24; *Donough* v. *Dewey,* 82 Mich. 309; *Lang* v. *Bayonne,* 74 N. J. L. 455; *State* v. *Bailey,* 106 Minn. 138; *State* v. *Poulin,* 105 Me. 224; and see *In re Ah Lee,* 5 Fed. 899; *Speer* v. *Kearney County,* 88 Fed. 749. This rule extends to all officers, judicial, executive or ministerial, *People* v. *White,* 24 Wend. 527; *Sheehan's Case,* 122 Mass. 446; to inferior as well as superior officers, *State* v. *Carroll,* 38 Conn. 449; *Mallett* v. *U. S. G. & S. M. Co.,* 1 Nev. 156; there cannot be at the same time an officer *de jure* and an officer *de facto* in possession of the same office, *Boardman* v. *Halliday,* 10 Paige 232; *Conover* v. *Devlin,* 15 How. Pr. 479; nor can there be two *de facto* officers in possession of the same office at the same time, *Conover* v. *Devlin, supra; State* v. *Blossom,* 19 Nev. 312.

MUNICIPAL ORDINANCES—HAWKERS AND PEDDLERS—DEFINITION OF.—An action was brought by a village against the defendants for the violation of an ordinance requiring a license tax to be paid "by each hawker of goods by retail, by samples, or by taking orders or otherwise." Defendants, trading under the name of Moyune Tea Co., had a place of business in a neighboring city, and periodically sent an agent into the plaintiff village to deliver goods previously ordered, and at the same time to take orders for subsequent de-

livery. *Held,* one who conducts a business in this way is not a hawker and not subject to the payment of the license tax. *Village of Scribner* v. *Mohr, et al.* (Neb. 1911) 132 N. W. 734.

In this country, 'hawker' and 'peddler' are used as synonyms in statutes regulating the vending of goods. WEBSTER'S NEW INTERNATIONAL DICTIONARY under 'Peddler.' *City of Davenport* v. *Rice,* 75 Ia. 74, 39 N. W. 191, 9 Am. St. Rep. 454. *Commonwealth* v. *Farnum,* 114 Mass. 267. It is generally held that one having a bona fide permanent place of business and, by wagon or otherwise, delivering goods ordered is not a peddler, even though on such trips he takes new orders. *Village of Stamford* v. *Fisher,* 140 N. Y. 187, 35 N. E. 500. *Commonwealth* v. *Eichenburg,* 140 Pa. 158, 21 Atl. 258. *Brenner* v. *Commonwealth,* 9 Ky. L. Rep. 289. *Contra*: *Elizabeth Borough* v. *Braun,* 17 Pa. Co. Ct. R. 257. There is a marked tendency by legislation and judicial decision to enlarge the application of the words, 'peddlers' and 'hawkers.' It is not necessary in order to be a peddler that one should cry or offer his goods for sale upon the street. *People* v. *Baker,* 115 Mich. 199, 73 N. W. 115. *Commonwealth* v. *Ober,* 12 Cush. 493. Courts have generally been ready to enlarge the application of these words where legislative enactment has in any way sanctioned such interpretation. *Allport* v. *Murphy,* 153 Mich. 486, 116 N. W. 1070. *Fallis* v. *City of Gas City,* 169 Ind. 508, 82 N. E. 1056. *Contra*: *State* v. *Bristow,* 131 Ia. 664, 109 N. W. 199. In the last named case, the legislature had sought to bring "itinerant vendors selling by samples or taking orders, whether for immediate or future delivery" under the operation of a statute regulating peddlers. A tea company salesman, like the one in the principal case, was held not to be a peddler under that statute: it was held that a peddler and an itinerant vendor selling from samples or taking orders for present or future delivery are not the same, in spite of the legislative enactment. This case seems to be followed in the principal case. The words of the ordinance in question, in defining hawkers, seem to be broad enough and fairly easy of application; but the court decided that defendant was not a hawker, not by applying the definitions laid down in the ordinance itself, but by authority *aliunde.* It has been held that, in the absence of statutory definition, the determination of whether a person is a peddler or not depends upon the circumstances of each case and not upon any arbitrary rules. *Commonwealth* v. *Edson,* 2 Pa. Co. Ct. R. 377. Whether it is a coincidence, or a result of the nature of the business, the large majority of defendants in recent "peddler" cases have been so-called "Tea Companies;" and the courts have usually been ready to hold "peddler" ordinances applicable to them. *City of Muskegon* v. *Zeeryp,* 134 Mich. 181, 96 N. W. 502, *City of Alma* v. *Clow,* 146 Mich. 443, 109 N. W. 853, *Fallis* v. *City of Gas City, supra, Allport* v. *Murphy, supra, State* v. *Bristow, supra,* and the principal case seem to be exceptions in this regard.

NEGLIGENCE—AUTOMOBILES—CARE REQUIRED—DUTY TO WARN.—Plaintiff, a physician, desired to purchase an automobile. Defendant sent a machine with a demonstrator. It became necessary to crank the car, and plaintiff inquired if he could do it, to which the demonstrator replied, "Yes, anybody can crank